

**UNITED STATES BANKRUPTCY COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA  
DURHAM DIVISION**

<b>IN RE:</b>	)	
	)	
<b>JAMES CLIFFORD LILLEY,</b>	)	<b>Case No. 10-81078</b>
	)	
<b>Debtor.</b>	)	
	)	
<b>JAMES CLIFFORD LILLEY,</b>	)	<b>Adv. Pro. No. 10-09110</b>
	)	
<b>Plaintiff,</b>	)	
	)	
<b>vs.</b>	)	
	)	
<b>WELLS FARGO, N.A.,</b>	)	
<b>OPTION ONE MORTGAGE LOAN TRUST</b>	)	
<b>2007-5 ASSET BACKED CERTIFICATE,</b>	)	
<b>LOAN LEADERS OF AMERICA, INC.,</b>	)	
<b>RIGHT-AWAY MORTGAGE, INC.,</b>	)	
<b>FIDELITY NATIONAL TITLE COMPANY,</b>	)	
<b>MORTGAGE ELECTRONIC</b>	)	
<b>REGISTRATION SYSTEMS, INC., AND</b>	)	
<b>AMERICAN HOME MORTGAGE</b>	)	
<b>SERVICING, INC.,</b>	)	
	)	
<b>Defendants.</b>	)	
	)	

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**DEFENDANTS WELLS FARGO, N.A. AND AMERICAN HOME MORTGAGE  
SERVICING, INC.'S MOTION TO DISMISS AND OBJECTION TO FAILURE TO  
JOIN A REQUIRED PARTY**

Defendants Wells Fargo, N.A., as Trustee for Option One Mortgage Loan Trust 2007-5 Asset Backed Certificates, Series 2007-5 (the "Trust") and American Home Mortgage Servicing, Inc., Servicer for the Trust ("AHMSI") (collectively "Defendants"), by and through their undersigned attorneys, respectfully move this Court to dismiss the Complaint filed by the Plaintiff, James Clifford Lilley, pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, made applicable in this adversary proceeding by Rule 7012(b) of the Federal Rules of

Bankruptcy Procedure. Further, the Defendants object to the Plaintiff's failure to join a required party pursuant to Rule 19 of the Federal Rules of Civil Procedure, made applicable to this adversary proceeding by Rule 7019 of the Federal Rules of Bankruptcy Procedure. In support of this Motion and Objection, the Defendants respectfully submit herewith a Memorandum of Law.

WHEREFORE, Defendants respectfully request that this Court dismiss the Complaint with prejudice, or, if the Complaint is not dismissed, require the joinder of Nancy B. Cook as a party, that the costs of this action be taxed to the Plaintiff, and that the Court grant such other relief as the Court deems just and proper.

Respectfully submitted this, the 28th day of January, 2011.

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: /s/ Pamela W. McAfee  
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*Attorneys for Defendants Wells Fargo Bank, N.A., as Trustee  
for Option One Mortgage Loan Trust 2007-5 Asset Backed  
Certificates, Series 2007-5 and American Home Mortgage  
Servicing, Inc.*

## **CERTIFICATE OF SERVICE**

The undersigned attorney hereby certifies that a true copy of the foregoing document was served on the parties indicated below by depositing copies thereof in a depository under the exclusive care and custody of the United States Postal Service in postage prepaid envelopes designating delivery by First Class Mail and properly addressed as follows:

*Bankruptcy Administrator:*

Michael D. West  
P.O. Box 1828  
Greensboro, NC 27402

*Chapter 13 Trustee:*

Richard M. Hutson, II  
Chapter 13 Office  
302 East Pettigrew St., Suite B-140  
P. O. Box 3613  
Durham, NC 27702

*Debtor/Plaintiff:*

James Clifford Lilley  
2921 Intercross Road  
Durham, NC 27704

*Counsel for Debtor/Plaintiff:*

Koury Lee Hicks, Esquire  
The Law Offices of John T. Orcutt  
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*Defendant:*

Mortgage Electronic Registration Systems, Inc.  
1818 Liberty Street  
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Reston, VA 20190

*Defendant:*

Loan Leaders of America, Inc.  
c/o Martin Foigelman  
3 MacArthur Place  
Suite 650  
Santa Ana, CA 92707

*Defendant:*

Right-Away Mortgage, Inc.  
10833 Valley View Street  
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This 28th day of January, 2011.

/s/ Pamela W. McAfee

Pamela W. McAfee